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Attorneys for Defendant MAMDOUH BAHNA

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

vs.

MAMDOUH BAHNA aka MAMDOUH  
SADEK BAHNA, M.D.,

Defendant

Case No. CR 05-982-ABC

**DEFENDANT MAMDOUH BAHNA'S  
NOTICE OF MOTION AND  
MOTION TO OFFSET BALANCE  
OF PENALTY AND TO RELEASE  
AND RETURN UNCLAIMED  
MONIES PAID FOR RESTITUTION;  
DECLARATION OF MAMDOUH  
BAHNA IN SUPPORT THEREOF**

Hon. Audrey B. Collins

**DATE:** September 17, 2012  
**TIME:** 1:30 p.m.  
**CTRM.:** 680

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 17, 2012 at 1:30 p.m. or as soon  
3 thereafter as this matter may be heard, in Courtroom 680 of the United States District  
4 Court for the Central District of California, located at 255 E. Temple Street, Los  
5 Angeles, California 90012, Defendant Mamdouh Bahna will move the Court for an  
6 order releasing to Defendant unclaimed funds paid by him as part of a judgment for  
7 Restitution in the amount of \$136,563.21. This Motion is made on the ground that  
8 Defendant has paid a total of \$990,518.54 to the Court in compliance with the  
9 judgment against him providing for restitution; that only \$703,955.33 has been  
10 claimed by purported victims of Defendant, leaving a balance in the Court's  
11 possession of \$286,563.21; that claims for the other monies have not been made for  
12 more than four years; and that after subtracting the outstanding balance and fine of  
13 \$146,916 due and payable to the United States, \$139,647.21 should be released and  
14 returned to Defendant.  
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19 This Motion is based upon this Notice of Motion, the accompanying  
20 Memorandum of Points and Authorities, the Declaration of Mamdouh Bahna, the  
21 Request for Judicial Notice, on the papers and records on file herein, and on such oral  
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1 and documentary evidence as may be presented at the time of the hearing.

2 DATED: August 17, 2012

LAW OFFICES OF  
MATTHEW C. MICKELSON

5 By: /s/ Matthew C. Mickelson  
6 MATTHEW C. MICKELSON  
7 Attorney for Defendant

**I.****STATEMENT OF FACTS**

A judgment against Defendant Mamdouh Bahna was entered and filed on December 12, 2007. (Declaration of Mamdouh Bahna Exh. "1.") The Judgment provided that Defendant was required to pay \$990,518.54 in restitution to victims and a fine of \$150,000 to the United States. (*Id.*) Defendant paid \$990,518.54 to the Court on December 5, 2007. (*Id.* at ¶ 3, Exh. "2.") All victims were properly notified of this payment and the fact that monies were available for restitution. However, since that date, only a total of \$703,955.33 has been paid to victims; no other claims for the monies or payments have been made in more than four years. (*Id.* at Exh. "3.") According to the records of the United States Probation Office, Defendant's current fine due and payable is \$146,916. (*Id.*)

**II.****ARGUMENT**

In the Ninth Circuit, Restitution judgments exist to provide full compensation to victims, as well as to serve penal goals; which aspect of these dual natures is most important depends on the situation. (*See U.S. v. Cloud* (9th Cir. 1990) 921 F.2d 225, 226 [finding that in the context of continuance of restitution judgment after death of defendant, compensation goals take precedence].) Other circuits believe that restitution judgments are primarily compensatory in nature (*See U.S. v. Speakman* (10th Cir. 2010) 594 F.3d 1165, 1177 ["the purpose of restitution is not to punish

1 defendants or to provide a windfall to crime victims but rather to insure that victims,  
2 to the greatest extent possible, are made whole for their losses"].)

3 A review of the case law has not found a Ninth Circuit case which determines  
4 what to do where funds paid in obedience of a restitution order have not been  
5 claimed. However, the Seventh Circuit in *U.S. v. Pawlinsky* (7th Cir. 2004) 374 F.3d  
6 536 did encounter such a situation. There, restitution monies paid by a politician to  
7 the court for unlawfully spending campaign contributions on personal expenses went  
8 unclaimed by victims; the district court thereafter directed that the unclaimed funds  
9 be sent to the Crime Victims Fund of the U.S. Treasury. The court of appeal reversed  
10 this order on the ground that the Crime Victims Fund was not a victim of the  
11 defendant's conduct and could not claim restitution monies. At that point the only  
12 option was to return the funds to the defendant's campaign organization, even though  
13 such a return would bring legal benefits to the convicted defendant in that it would  
14 possibly let him avoid state law penalties regarding the closing of his campaign fund.  
15 (*Id.* at 539.)

16 No victim is required to participate in any phase of a restitution order. (18  
17 U.S.C. § 3664(g)(1).) Accordingly, if there is no victim to provide restitution, the  
18 Tenth Circuit has concluded that under the statute, restitution cannot be ordered.  
19 (*United States v. Speakman, supra*, 594 F.3d at 1174-1179, *disagreed with by United*  
20 *States v. Johnson* (2d Cir. 2004) 378 F.3d 230.)

21 Accordingly, the better rule (under *Speakman*) is that where victims have

1 decided not to participate in a restitution order, and therefore leave money in the  
2 court's possession, those funds should be released to the original payer, since there is  
3 no statutory authorization for them to go anywhere else or to remain in the court's  
4 bank account.  
5

6 Here, various victims have refused to accept restitution funds, despite  
7 undoubtedly being notified of the existence of the funds. (*See* 18 U.S.C. §  
8 3664(d)(2)(A) [probation officer shall notify victims of right to indicate amount they  
9 have been harmed for purposes of allowing them to recover amounts from convicted  
10 defendant].) There is no statutory basis for the Court to hold on to those funds or to  
11 transfer them to any other person or entity. Therefore, after deducting the amounts  
12 necessary to pay Defendant's remaining fine obligation of \$146,916, the Court should  
13 order the remaining funds of \$136,563.21 be returned to Defendant.  
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### 16 17 **III.**

### 18 **CONCLUSION**

19 For the reasons given above, Defendant respectfully requests the Court to  
20 issue an order requiring the administrative office of the court to release to Defendant  
21 the \$136,563.21 currently in the Court's possession.

22 DATED: August 17, 2012

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MATTHEW C. MICKELSON

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26 By: /s/ Matthew C. Mickelson  
MATTHEW C. MICKELSON  
Attorney for Defendant  
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